

(iii) A taxpayer with multiple locations must combine the beer tax liability for all locations to determine eligibility for the quarterly return procedure;

(iv) A taxpayer who has both domestic operations and import transactions must combine the beer tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes \$5 million or more in beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than \$50,000 in beer taxes during that calendar year; and

(vii) If a taxpayer filing quarterly exceeds \$50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed \$50,000.

(d) *Time for filing returns and paying tax.* Except as otherwise provided in § 25.164a for semimonthly tax returns, the brewer shall file the tax return, TTB F 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 25.164a(c).

(e) *Timely filing.* (1) When the brewer sends the semimonthly or quarterly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section,

with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly or quarterly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly or quarterly return and of the remittance, if enclosed with the return.

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(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-246, 52 FR 668, Jan. 8, 1987; T.D. ATF-251, 52 FR 19314, May 22, 1987, T.D. ATF-365, 60 FR 33669, June 28, 1995; T.D. TTB-41, 71 FR 5603, Feb. 2, 2006; T.D. TTB-89, 76 FR 3511, Jan. 20, 2011]

EFFECTIVE DATE NOTE: By T.D. TTB-89, 76 FR 3511, Jan. 20, 2011, § 25.164 was amended by revising paragraphs (c) and (d), effective Feb. 22, 2011 to Feb. 24, 2014.

§ 25.164a Special September rule for taxes due by semimonthly return.

(a) *Division of second semimonthly period*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return, TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer

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(EFT) is not required by § 25.165, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment—Safe harbor rule*—(1) *General*. Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) *Taxpayment not by EFT*. Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Weekends and holidays*. If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) *Example: Payment of tax for the month of September*—(1) *Facts*. X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement*. X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29

(§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must not be less than \$21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of \$2,000 for the period September 27–30 no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

[T.D. TTB–89, 76 FR 3512, Jan. 20, 2011]

EFFECTIVE DATE NOTE: By T.D. TTB–89, 76 FR 3512, Jan. 20, 2011, § 25.164a was revised, effective Feb. 22, 2011 to Feb. 24, 2014.

§ 25.165 Payment of tax by electronic fund transfer.

(a) *Eligible brewers*. (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, is not authorized for a taxpayer who is required by this section to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 25.159, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words “at least 80 percent”